

83.6 ATTORNEY DISCIPLINE

The United States District Court for the Western District of Missouri, in furtherance of its inherent power and responsibility to supervise the conduct of attorneys who are admitted to practice before it, or admitted for the purpose of a particular proceeding (*pro hac vice*), promulgates the following Procedures of Disciplinary Enforcement superseding all of its other Procedures pertaining to disciplinary enforcement heretofore promulgated.

(a) Attorneys Convicted of Crimes.

1. Upon the filing with this Court of a certified copy of a judgment of conviction demonstrating that any attorney admitted to practice before the Court has been convicted in any Court of the United States, or the District of Columbia, or any state, territory, commonwealth or possession of the United States of a serious crime as hereinafter defined, the Court shall enter an order immediately suspending that attorney, whether the conviction resulted from a plea of guilty, or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of any appeal, until final disposition of a disciplinary proceeding to be commenced upon such conviction. A copy of such order shall immediately be served upon the attorney. Upon good cause shown, the Court may set aside such order when it appears in the interest of justice to do so.
2. The term "serious crime" shall include any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, involves false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime."
3. A certified copy of a judgment of conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against that attorney based upon the conviction.
4. Upon the filing of a certified copy of a judgment of conviction of an attorney for a serious crime, the Court may, in addition to suspending that attorney in accordance with the provisions of this Rule, institute a disciplinary process as provided in these Rules in which the sole issue to be determined shall be the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction, provided that any disciplinary proceeding so instituted will not be brought to final hearing until all appeals from the conviction are concluded.
5. Upon the filing of a certified copy of a judgment of conviction of an attorney

for a crime not constituting a "serious crime," the Court may refer the matter to counsel for whatever action counsel may deem warranted, including the institution of a disciplinary proceeding before the Court; provided, however, that the Court may in its discretion make no reference with respect to convictions for minor offenses.

6. An attorney suspended under the provisions of this Rule will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed but the reinstatement will not terminate any disciplinary proceeding then pending against the attorney, the disposition of which shall be determined by the Court on the basis of all available evidence pertaining to both guilt and the extent of discipline to be imposed.

(b) Discipline Imposed By Other Courts.

1. Any attorney admitted to practice before this Court shall, upon being subjected to public discipline by any other Court of the United States or the District of Columbia, or by a court of any state, territory, commonwealth or possession of the United States, promptly inform the Clerk of this Court of such action.
2. Upon the filing of a certified or exemplified copy of a judgment or order demonstrating that an attorney admitted to practice before this Court has been disciplined by another Court, this Court shall forthwith issue a notice directed to the attorney containing:
 - a. a copy of the judgment or order from the other court; and
 - b. an order to show cause directing that the attorney inform this Court within 30 days after service of that order upon the attorney, personally or by mail, of any claim by the attorney predicated upon the grounds set forth in Rule 83.5(c) that the imposition of the identical discipline by the Court would be unwarranted and the reasons therefor.
3. In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this Court shall be deferred until such stay expires.
4. Upon the expiration of 30 days from service of the notice issued pursuant to the provisions of (b) above, this Court shall impose the identical discipline unless the respondent-attorney demonstrates, or this Court finds, that upon the face of the record upon which the discipline in another jurisdiction is predicated it clearly appears:

- a. that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
- b. that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this Court could not, consistent with its duty, accept as final the conclusion on that subject; or
- c. that the imposition of the same discipline by this Court would result in grave injustice; or
- d. that the misconduct established is deemed by this Court to warrant substantially different discipline.

Where this Court determines that any of said elements exist, it shall enter such other order as it deems appropriate.

- 5. In all other respects, a final adjudication in another court that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in the Court of the United States.
- 6. This Court may at any stage appoint counsel to prosecute the disciplinary proceedings.

(c) Disbarment on Consent or Resignation in Other Courts.

- 1. Any attorney admitted to practice before this Court who shall be disbarred on consent or resign from the bar of any other Court of the United States or the District of Columbia, or from the bar of any state, territory, commonwealth or possession of the United States while an investigation into allegations of misconduct is pending, shall, upon the filing with this Court of a certified or exemplified copy of the judgment or order accepting such disbarment on consent or resignation, cease to be permitted to practice before this Court and be stricken from the roll of attorneys admitted to practice before this Court. A voluntary resignation of the attorney from the bar of any state territory, commonwealth or possession of the United States where an investigation into allegations of misconduct is pending, does not terminate any disciplinary proceeding against that attorney in this Court.
- 2. Any attorney admitted to practice before this Court shall, upon being disbarred on consent or resigning from the bar of any other Court of the United States or the District of Columbia, or from the bar of any state, territory, commonwealth or possession of the United States while an investigation into allegations of misconduct is pending, promptly inform the Clerk of this Court of such disbarment on consent or resignation.

(d) Disciplinary Proceedings.

1. When misconduct or allegations of misconduct which, if substantiated, would warrant discipline on the part of an attorney admitted to practice before this Court shall come to the attention of this Court, whether by complaint or otherwise, and the applicable procedure is not otherwise mandated by these Rules, this Court may refer the matter to counsel for investigation and the prosecution of a formal disciplinary proceeding or the formulation of such other recommendation as may be appropriate. If this Court determines that appointment of counsel is not necessary for a determination that probable cause exists to believe that discipline is warranted, the Court may give notice of the grounds for discipline without the appointment of counsel.
2. Should counsel conclude after investigation and review that a formal disciplinary proceeding should not be initiated against the respondent-attorney because sufficient evidence is not present, or because there is pending another proceeding against the respondent-attorney, the disposition of which in the judgment of the counsel should be awaited before further action by this Court is considered or for any other valid reason, counsel shall file with the Court a recommendation for disposition of the matter, whether by dismissal, admonition, deferral, or otherwise setting forth the reasons therefor.
3. To initiate a formal disciplinary proceeding, when counsel has been appointed, counsel must demonstrate to the Court that there is probable cause to believe that discipline is warranted. If a finding of probable cause is made by the Court, counsel shall file, with the Court, a complaint which contains a short and plain statement of each ground for discipline. The complaint shall be served on the attorney who shall have 30 days thereafter to file an answer which shall identify any disputed issues of fact and any matters in mitigation.

If this Court determines that probably cause exists to believe that discipline is warranted without the appointment of counsel, the Court shall serve a complaint on the attorney in question containing a short and plain statement of each ground for discipline. The attorney shall have 30 days thereafter to file an answer which shall identify any disputed issues of fact and any matters in mitigation.

4. Upon the respondent-attorney's answer to the complaint, if any issue of fact is raised or the respondent-attorney gives notice of issues on which the respondent-attorney wishes to be heard in mitigation, this Court shall set the matter for prompt hearing before one or more judges of this Court, provided; however, that if the disciplinary proceeding is predicated upon the complaint of a judge of this Court, the hearing shall be conducted before a panel of three other judges of this Court appointed by the Chief Judge. If the Chief

Judge is the complainant, the active district judge with the most seniority shall appoint the three judge panel. The judge or judges of this Court appointed to conduct a disciplinary hearing may consist of magistrate judges, active district judges or senior district judges. In the event the appointing judge determines that the disciplinary hearing involves issues related to practice before the Bankruptcy Court, the judge or judges appointed shall include at least one bankruptcy judge. The judge or judges appointed to conduct a disciplinary hearing shall report findings on disputed facts and issues heard in mitigation, together with its recommendation for appropriate discipline, if any, to the court. The court shall determine the appropriate discipline, if any.

(e) Disbarment on Consent While Under Disciplinary Investigation or Prosecution.

1. Any attorney admitted to practice before this Court who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may consent to disbarment, but only by delivering to this Court an affidavit stating that the attorney desires to consent to disbarment and that:
 - a. the attorney's consent is freely and voluntarily rendered; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications of so consenting;
 - b. the attorney is aware that there is a presently pending investigation or proceeding involving allegations that there exist grounds for the attorney's discipline the nature of which the attorney shall specifically set forth;
 - c. the attorney acknowledges that the material facts so alleged are true; and
 - d. the attorney so consents because the attorney knows that if charges were predicated upon the matters under investigation, or if the proceeding were prosecuted, the attorney could not successfully defend himself.
2. Upon receipt of the required affidavit, this Court shall enter an order disbarring the attorney.
3. The order disbarring the attorney on consent shall be a matter of public record. However, the affidavit required under the provisions of this Rule shall not be publicly disclosed or made available for use in any other proceeding except upon order of this Court.

(f) Resignation While Under Disciplinary Investigation or Prosecution.

An attorney admitted to practice before this Court who is the subject of an investigation into or a pending proceeding involving allegations of misconduct may voluntarily resign from the bar of the Court, but the resignation shall not automatically terminate the disciplinary proceeding against that attorney.

(g) Reinstatement.

- 1. After Disbarment or Suspension.** An attorney suspended for three months or less shall be automatically reinstated at the end of the period of suspension upon the filing with the Chief Judge of the Court an affidavit of compliance with the provisions of the order of suspension. An attorney suspended for more than three months or disbarred may not resume practice until reinstated by order of the Court.
- 2. Time of Application Following Disbarment.** An attorney who has been disbarred, after hearing or by consent, may not apply for reinstatement, without leave of Court, until the expiration of at least five years from the effective date of the disbarment.
- 3. Deposit of Costs of Proceeding.** Petitions for reinstatement under this Rule shall be accompanied by an advance deposit, in an amount to be set from time to time by the Court, towards payment of anticipated costs of the reinstatement proceeding. The actual amount of the cost of the reinstatement proceeding shall be fixed by the Court at the conclusion of the proceeding.
- 4. Petitions for Reinstatement.** Petitions for reinstatement by a disbarred attorney or an attorney suspended for more than three months under this Rule shall be filed with the Chief Judge of this Court. Upon receipt of the petition, the Chief Judge shall assign the petition to one or more judges of this Court to conduct appropriate proceedings and to recommend to the Court appropriate disposition. If the original disbarment or suspension resulted from the complaint of a judge of this Court, the petition for reinstatement shall be assigned to a judge or judges other than the complaining judge. In addition, the Court, after consulting with the judge or judges to whom the petition was assigned, may appoint counsel to investigate the petition on behalf of the Court.

If counsel is appointed under this Rule, the counsel appointed shall submit, within 45 days, a report and recommendation to the judge or judges to whom the petition has been assigned. After receipt of the report and recommendation of appointed counsel, the judge or judges to whom the petition has been assigned may schedule a hearing on the petition. If a hearing is scheduled, appointed counsel shall assure that all pertinent information bearing on the relief requested in the petition is presented to the Court. At the hearing, the disciplined attorney shall have the burden of

demonstrating by clear and convincing evidence that the disciplined attorney has the necessary integrity, moral qualifications, and competency for readmission to practice before this Court. The judge or judges to whom the petition is assigned shall submit suggested findings and conclusions to the Court.

5. **Conditions of Reinstatement.** If the petitioning attorney is readmitted to practice before this Court, readmission may be subject to conditions. Conditions of reinstatement may include the payment of all or part of the costs of the proceedings, and may include partial or complete restitution to parties harmed by the attorney, and proof of competency to practice before this Court.
6. **Successive Petitions.** No petition for reinstatement under this Rule shall be filed within one year following an order rejecting a petition for reinstatement.

(h) Service of Papers and Other Notices.

Service of a complaint instituting a formal disciplinary proceeding shall be made by personal service or by registered or certified mail. Service of any papers or notices required by these Rules shall be deemed to have been made if such paper or notice is addressed to the respondent-attorney at the address shown on the most recent registration statement filed pursuant to Rule 83.5(i); or to counsel or the respondent-attorney at the address indicated in the most recent pleading or other document filed in the course of any proceeding; or at the respondent-attorney's last known address.

(i) Appointment of Counsel.

Whenever counsel is to be appointed, pursuant to these Rules, to investigate allegations of misconduct; prosecute disciplinary proceedings or in conjunction with a reinstatement petition filed by a disciplined attorney, this Court shall make the appointment on such conditions as the Court approves. The Court may appoint as counsel the counsel of the disciplinary agency of the highest court of the State of Missouri wherein the Court sits, or one or more members of the Bar of this Court, or an Assistant United States Attorney, to investigate allegations of misconduct or to prosecute disciplinary proceedings under these rules, provided, however, that the respondent- attorney or disciplined attorney may move to disqualify counsel so appointed who is or has been engaged as an adversary of the said attorney in any matter. Counsel, once appointed, may not resign unless permission to do so is given by this Court.

(j) Payment of Fees and Costs.

At the conclusion of any disciplinary investigation or prosecution, if any, under these Rules, counsel may make application to this Court for an order awarding reasonable

fees and reimbursing costs expended in the course of such disciplinary investigation or prosecution. The Court may require counsel at any time to submit a budget for approval by the Court.

Additionally, any costs incurred by this Court in administering the provisions of this Rule shall be paid upon order of the Chief Judge of this Court. Any payments made under this Rule will be made by the Clerk of Court, as trustee, from funds collected pursuant Rule 83.5(i) hereof. Such payments may be taxed as costs against any attorney disciplined by the Court

(k) Certificate of Disciplinary Judgment and Notice by Clerk.

1. Upon being informed that an attorney admitted to practice before this Court has been convicted of any crime, the Clerk of this Court shall determine whether the clerk of the court in which such conviction occurred has forwarded a certificate of such conviction to this Court. If a certificate has not been so forwarded, the Clerk of this Court shall promptly obtain a certificate and file it with this Court.
2. Upon being informed that an attorney admitted to practice before this Court has been subjected to discipline by another court, the Clerk of this Court shall determine whether a certified or exemplified copy of the disciplinary judgment or order has been filed with this Court, and, if not, the Clerk shall promptly obtain a certified or exemplified copy of the disciplinary judgment or order and file it with this Court.
3. Whenever it appears that any person convicted of any crime and has been disbarred, suspended, censured, or disbarred on consent by this Court is admitted to practice law in any other jurisdiction or before any other court, the Clerk of this Court shall, within 10 days of that conviction, disbarment, suspension, censure, or disbarment on consent, transmit to the disciplinary authority in such other jurisdiction, or for such other court, a certificate of the conviction or a certified exemplified copy of the judgment or order of disbarment, suspension, censure, or disbarment on consent, as well as the last known office and residence addresses of the defendant or respondent.
4. The Clerk of this Court shall, likewise, promptly notify the National Discipline Data Bank operated by the American Bar Association of any order imposing public discipline upon any attorney admitted to practice before this Court.

(l) Jurisdiction. Nothing contained in this Rule shall be construed to deny to this Court such powers as are necessary for the Court to maintain control over proceedings conducted before it, such as proceedings for contempt under Title 18 of the United States Code or under Rule 42 of the Federal Rules of Criminal Procedure.

- (m) **Unauthorized Practice.** An attorney who, before admission, unless specially authorized by one of the judges, or during disbarment or suspension exercises any of the privileges of a member of this Bar, or who pretends to be entitled to so do, is guilty of contempt of court and becomes subject to appropriate punishment therefor, to be instituted in the same manner as provided in Rule 83.6.